

REMARKS

Claims 1-22 are presently pending. Reconsideration and allowance of all presently pending claims is respectfully requested in light of the above amendments and the following remarks.

Rejections under 35 U.S.C. §102

Claims 1-5, 8-10, 13, 15-19, 21, and 22 stand rejected under 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 5,591,235 to Kuslich (hereinafter “Kuslich”). Applicant respectfully traverses the rejection for the following reasons.

The PTO provides in MPEP § 2131 that “[t]o anticipate a claim, the reference must teach every element of the claim” With regard to independent claims 1, 13, and 19, Applicant submits that Kuslich fails to teach every element of those claims.

In particular, Kuslich fails to teach at least the following limitations recited in claim 1:

a first transverse plate;

a second transverse plate;

and

the first and second transverse plates being adapted for complete insertion within the intervertebral space.

In particular, the hollow cylindrical screws 14 and locking caps 26 of Kuslich identified by the Examiner as reading on the first and second transverse plates of claim 1 are not “plates” within even the broadest definition of that term. Merriam Webster’s Online Dictionary (www.m-w.com) provides several definitions for “plate,” including, *inter alia*, “a smooth flat thin piece of material” and “forged, rolled, or cast metal in sheets usually thicker than 1/4 inch (6

millimeters).” In other words, a “plate,” by definition, is substantially flat. Neither of the foregoing definitions, nor any of the other definitions provided, covers a cylindrical structure such as the elements 14, 26, comprise. Clearly, therefore, Kuslich does not teach first and second transverse plates, as required by claim 1.

Additionally, the cylindrical screws 14 and end caps 26 of Kuslich are not “adapted for complete insertion within the intervertebral space.” On the contrary, as clearly illustrated in Figs. 1 and 2, the elements 14 are adapted for insertion within the vertebral body itself; not within the space between the vertebrae (i.e., “the intervertebral space”). Clearly, therefore, Kuslich fails to teach “first and second transverse plates . . . adapted for complete insertion within the intervertebral space,” as required by claim 1.

In view of the foregoing, it is apparent that Kuslich fails to anticipate claim 1 for failure to teach every element thereof. Claims 13 and 19 include limitations similar to those of claim 1 and are therefore also not anticipated by Kuslich. Claims 2-5, 8-10, 15-18, 21, and 22 depend from and further limit claims 1, 13, and 19 and are therefore also not anticipated by Kuslich.

Rejection under 35 U.S.C. §103(a)


Claims 6, 7, 14, and 20 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Kuslich in view of U.S. Patent No. 6,432,107 to Ferree (hereinafter “Ferree”). Claims 11 and 12 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Kuslich in view of U.S. Patent Publication No. 2002/0116065 to Jackson (hereinafter “Jackson”). In response, Applicant submits that, because claims 6, 7, 11, 12, 14, and 20 depend from and further limit claims 1, 13, and 19, they are also in condition for allowance for at least the reasons set forth above.

Conclusion

It is clear from the foregoing that claims 1, 13, and 19 are in condition for allowance. Claims 2-12, 14-18, and 20-22 depend from independent claims 1, 13, and 19 and are therefore also deemed to be in condition for allowance.

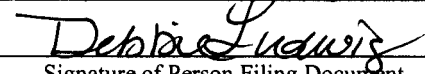
An early formal notice of allowance of claims 1-22 is requested.

Respectfully submitted,


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